IN THE

Supreme Court of the United States

October Term, 1978
No. 78-606

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY,
Petitioner,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California.

Motion for Leave to File Amicus Curiae Brief and Amicus Curiae Brief of Communications Workers of America in Support of the Petition for Writ of Certiorari.

TIMOTHY J. SARGENT,
BODKIN, MCCARTHY, SARGENT & SMITH,
707 Wilshire Boulevard, 51st Floor,
Los Angeles, Calif. 90017,
(213) 620-1000,

CHARLES V. KOONS,
KANE AND KOONS,
1100 Seventeenth Street, N.W.,
Washington, D.C. 20036,

Attorneys for Communications Workers of America, AFL-CIO.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

SUBJECT INDEX

IN THE

Supreme Court of the United States

October Term, 1978
No. 78-606

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY,
Petitioner,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California.

Motion of Communications Workers of America for Leave to File Amicus Curiae Brief.

Communications Workers of America, AFL-CIO ("CWA"), a National Labor Organization within the meaning of the National Labor Relations Act, respectfully moves this Court for leave to file the *amicus curiae* brief annexed hereto.

1. Standing and Interest.

CWA is the exclusive collective bargaining agent for 55,439 employees of the Pacific Telephone and Telegraph Company.

2. Timing of This Application.

On or about October 10, 1978, CWA received a copy of the Petition for Writ of Certiorari filed herein by the petitioner and since that time has studied the arguments therein set forth.

3. Point to Be Argued.

CWA believes there is a necessity for additional argument on the following point.

THE COMMISSION'S DECISION WILL NEGATIVELY AFFECT EMPLOYMENT IN THE STATE OF CALIFORNIA.

4. Summary of Argument and Scope Thereof.

Pacific mentions fleetingly the effect of the PUC decision on its work force.

As *amicus curiae*, CWA would collect for the Court the evidence presented herein that the loss of eligibility and the payment of back taxes plus interest and rate refunds to customers would force Pacific to lay off approximately 12,500 employees and to reduce its construction budget by more than 50%. Further, there was testimony concerning the "ripple effect" this would have on other California industries and the significant consequences to employment in the State.

As *amicus curiae*, CWA would urge through argument and precedent that the PUC could not foreclose advance ruling from the IRS in view of the economic impact of the decision.

As *amicus curiae*, CWA proposes that it could cover this subject matter in a brief not to exceed 30 pages in length.

For the reasons stated above and in the annexed brief, CWA requests leave to file its *amicus curiae* brief in support of the Petition for Writ of Certiorari.

Respectfully submitted,

TIMOTHY J. SARGENT,
BODKIN, MCCARTHY, SARGENT & SMITH,

CHARLES V. KOONS,
KANE AND KOONS,

Attorneys for Communications Workers of America, AFL-CIO.

IN THE

Supreme Court of the United States

October Term, 1978
No. 78-606

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY,
Petitioner,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California.

Amicus Curiae Brief of Communications Workers of America in Support of the Petition for Writ of Certiorari.

Introduction.

1. CWA is the exclusive collective bargaining representative for 55,439 employees of Pacific Telephone and Telegraph Company ("Pacific").

2. CWA, in behalf of those employees and in its own behalf, with leave of Court, files this *amicus curiae* brief in support of the Petition for Writ of Certiorari and in opposition to the 3 to 2 opinion in Decision No. 87838 rendered by the Public Utilities Commission of the State of California ("PUC" or "the Commission").

3. In summary of its position herein CWA urges that the Commission erred in rendering a decision

based merely upon its analysis of the federal tax laws when the Commission knew that an incorrect analysis would have far-reaching harmful consequences (a) in the quality of service to ratepayers and customers and (b) in its economic effect upon employment in the State of California.

CWA POSITION.

I

The Commission's Failure to Deal With or Make Findings Upon the Possible Loss of Tax Eligibility Renders Its Decision an Arbitrary Violation of Due Process.

Pacific's Treasurer, Mr. Joses, established the financial problems stemming from loss of eligibility. He established that loss of eligibility would result in a two hundred sixteen million dollar shortfall for the next year's construction budget. He noted the foreclosure of public money markets, the harsh terms of private lending; the cost of repayments. (Exhibit 9, pp. 26-31.)

From the standpoint of CWA, all of the foregoing merges in one statement made by Mr. Joses at page 32:

> "The [work] force is estimated at 82,571 [people] at the end of 1977, a decline of 13.3% from our present estimate. That means 12,634 employees would have to be laid off which is an extremely serious matter."

Indeed.

Much more is said by Mr. Pollard (Exhibit 11) about decline in the quality of service which would be occasioned by loss of eligibility.

> "Slow dial tone . . . no circuits available and equipment failures . . . held orders . . . [use of] worn or obsolete equipment . . . [customers] up in arms over the sorry state of affairs."

The degradation of service would of course be bad. Urbanized Californians would become discommoded and irritable because of this bad service. But the irritation of the innocent customer is nothing as against the helplessness of the disemployed worker.

The court will note that the telephone business is unlike other businesses. The mechanic laid off at Lockheed can always go to work for Rockwell. Such people have saleable skills. The craftsperson laid off at Pacific or General is a telephone craftsperson. We can't tell 12,634 such craftspeople to go to work for some other telephone company in the State of California.

The Court's attention is also directed to the identity of the laid-off employee.

To reduce its work force by 12,500 people "would require laying off employees with as much as six years of service." (Exhibit 11, p. 11.)

Interested groups appeared before the PUC suspecting it would be their members who would be the first to go. (Decision, Pacific's Appendix, p. 16.) The Los Angeles Urban League spoke on behalf of blacks and other minorities. The NAACP sought a decision which would preserve the employment of ethnic minorities and aid unemployed blacks. Los Padrinos cautioned the effect loss of eligibility would have upon Spanish surnamed employees. The Pacific Women's Affirmative Action organization appealed for preserved eligibility

so as to enable Pacific to achieve its affirmative action goals relating to women.

Pollard testified that, based on recent hiring practice, more than half of the laid-off workers would be women, more than one-third would be ethnic minorities. (Transcript, p. 508.) This apparently assumes a "last hired first fired" approach which may or may not be in compliance with Title VII and/or the Bell System consent decree, collective bargaining obligations, or either, or both.

CWA represents all of the employees of Pacific and General; whatever the ethnic or sex identity of the disaffected 12,500 employees, they will be people taken out of the bargaining unit and out of work.

In addition to these employees directly affected, Mr. Pollard spoke euphemistically about a "ripple effect" which would result in 2,400 lost Western Electric jobs in California and 4,700 lost Western Electric jobs elsewhere. (Exhibit 11, p. 10; figures modified at Transcript, p. 486, lines 3-6.)

It is possible then, that 20,000 jobs will be lost if eligibility is lost, that the morale of a presently efficient work force will be destroyed, and that instantaneous telephone communication will be confined to emergency situations. This possibility, according to the testimony, looms large if eligibility is lost.

No witnesses were called in rebuttal of this testimony. Cross-examination was uneventful. The testimony stands.

The Commission listened to this testimony and, with perhaps a touch of sarcasm, it characterized such testimony as "a service and employment scenario of hor-

rendous proportions." (Decision, p. 35.) The Commission foresaw:

> ". . . no meaningful change in the operations and quality of service, number of employees, levels of earnings, impairment of financial integrity, or other deleterious consequences as predicted by Pacific." (Decision, p. 35.)

The reasoning of the Commission concludes "no meaningful change" because "the [tax] eligibility of both companies is unaffected" and then adds the key words "*in our judgment.*" (Decision, p. 35.)

We know now that the PUC's critical judgment was wrong. That error undermines the validity of the decision and brings the adverse economic impact a giant step closer.

The Commission disregards the testimony of Pacific's financial witnesses. CWA would also like to disregard these testimonial predictions, but the potential firing of 20,000 employees requires assurance of the soundest kind. Such assurances are missing from the record.

There are only two conceivable reasons why the PUC rejected the predictions. Both are hinted at in the Decision, but neither is the subject of a finding.

In the first paragraph of page 35, the PUC suggests that Pacific ably absorbed a $176 million refund and a $90 million rate reduction in 1972-73 with no appreciable harm. At pages 36-37, the Commission looks at Pacific's successful handling of the 1972-73 problem and with rare bravado says, "If this be confiscation, let there be more of the same." That remark is somewhat more swashbuckling than typical of regulatory agencies.

Of course, the very figures used by the Commission for comparison purposes at page 35 total nine hundred million dollars against two hundred sixty million in 1972-73. The comparison is disparate and the Commission's conclusion does not follow. (See Pollard's testimony at Transcript, pp. 487-488.)

Notwithstanding, the Commission in this part of its Decision, seems reliant on the managerial ability of Pacific. "They did it before, they can do it again." Precious little comfort is taken from that belief, however, in view of the fact that everywhere else the Decision is honeycombed with criticism of Pacific's managerial abilities. So, for example, at page 9, the Commission labels Management as "intransigent" and "deplores" its decision making. At page 13, it assumes" Pacific's "imprudent Management." At page 41, the Commission excoriates Management for failure to previously seek an advisory IRS ruling. At page 47, the PUC expressly finds Management "imprudent."

CWA finds no assurance that Management could handle with elan a one billion dollar shortfall.

The second potential reason for the PUC's "no meaningful change" remark is similarly without support. We know that from the opinion already received from the IRS.

Twenty thousand jobs may well depend upon the accuracy of the Commission's tax analysis. Were the tax ramifications relatively clear-cut, perhaps those 20,000 workers would be reassured of their future. However, in the Commission's own words:

> "We have here a case of first impression under the tax laws . . ." (Decision, p. 41.)

The Commission has inaccurately predicted the likely response of the IRS and further presumes the reaction of the U.S. Supreme Court to a matter of first impression. It is so sure of its prediction that it is willing to and does gamble one billion Pacific dollars, continued good service, and 20,000 jobs on the outcome. That prediction is beyond mere arbitrariness. In the words of Commissioner Symons, it is a "reckless" decision. In the words of Commissioner Sturgeon, it is a "cavalier" decision. (See dissents.) Either lie outside the bounds of due process.

Respectfully submitted,

TIMOTHY J. SARGENT,
BODKIN, MCCARTHY, SARGENT & SMITH,

CHARLES V. KOONS,
KANE AND KOONS,

Attorneys for Communications Workers of America, AFL-CIO.